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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/077,491

02/15/2002

Christopher Collings

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7590

06/07/2007

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EXAMINER

MAGUIRE, LINDSAY M

ART UNIT

PAPER NUMBER

3692

MAIL DATE

DELIVERY MODE

06/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/077,491

Applicant(s)

COLLINGS ET AL.

Examiner

Lindsay M. Maguire

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/2/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Final Office Action is in response to the application filed on February 15, 2002 and the amendments filed on April 2, 2002.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-12, 21, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: between the calculation and the plurality of rules. Specifically, a plurality of rules are not disclosed or described in the claim in such a way as to facilitate an understanding of what exactly is being claimed.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-14, 16, and 18-28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,890,138 (Godin et al. '138).

Godin et al. '138 disclose receiving product data for a plurality of products (column 1, lines 60-62); receiving sales data for each of the products (column 1, lines 63-66); calculating sales trend condition for each of the products based on a current time, the sales data for each of the products, and the product data for each of the products (see Figure 10; column 1, lines 66-67 – column 2, lines 1-5); receiving a customer request to view the products (column 3, lines 16-20); and presenting a web page including a predetermined portion of the product data and a sales trend indicator (Figure 10; 142, 144, 146) representing the sales trend condition for each of the products (see Figure 10). Additionally, Godin et al. '138 disclose that receiving the sales data further comprises processing a real sales velocity for each of the products (column 2, lines 48-63; also shown in Figure 3 in the "Update Counter, Price & Quantity" block); calculating the sales trend condition is further based on the real sales velocity for each of the products and a set sales velocity for each of the products (Figure 10, i.e. how fast the items are selling vs. how much time is left in the auction); the sales trend indicator represents how quickly each of the products is selling (142, 144, 146; i.e. the amount of product left vs. how many items are left); and wherein the sales trend condition is one of a set of system defined conditions (column 6, lines 37-43). Godin et al. '138 further disclose that the product data comprises at least a product name, a product description,

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a product photo, a start time, a sale time duration, and a total quantity (see Figure 10); wherein the presenting webpage further comprises: displaying at least a product name, a quantity available, a quantity remaining, a sale duration, a time remaining, and a product photo for each of the products (Figure 10); the calculating is based on a plurality of rules; wherein the rules take into consideration a real sales velocity and a set sales velocity for each of the bargain countdown products (column 6, lines 37-43); wherein the real sales velocity is determined by dividing the number sold by the elapsed time since the sale started and the set sales velocity is determined by dividing the total available quantity by the sales duration (it is noted, that it is inherent that one would determine the real time sales velocity by dividing the number of products sold by the elapsed time, and the set sales velocity by dividing the total products available by the total time available for the sale); decrementing the current quantity based on the real velocity, and decrementing the current quantity and the actual quantity based on the real velocity (Figure 10; column 6, lines 37-43).

Godin et al. '138 also disclose a computing device coupled to a wide area network (column 3, lines 16-20); a server computer coupled to the wide are network having instructions stored thereon which when executed cause the server to perform operations (column 2, lines 48-63) comprising: receiving product data for a plurality of products (column 1, lines 60-62); receiving sales data for each of the products (column 1, lines 63-66); calculating a sales trend condition for each of the products based on a current time, the sales data for each of the products, and the product data for each of

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the products (see Figure 10; column 1, lines 66-67 – column 2, lines 1-5); receiving a customer request to view the products (column 3, lines 16-20); and presenting a web page including a predetermined portion of the product data and a sales trend indicator (Figure 10; 142, 144, 146) representing the sales trend condition for each of the products (see Figure 10). Godin et al. '138 also disclose that calculating the sales trend condition is further based on the real sales velocity for each of the products and a set sales velocity for each of the products (Figure 10, i.e. how fast the items are selling vs. how much time is left in the auction); and wherein the real sales velocity is determined by dividing the number sold by the elapsed time since the sale started and the set sales velocity is determined by dividing the total available quantity by the sales duration (it is noted, that it is inherent that one would determine the real time sales velocity by dividing the number of products sold by the elapsed time, and the set sales velocity by dividing the total products available by the total time available for the sale).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 15, 17, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godin et al. '138 as applied to claims 1-6, 8-14, 16, and 18-28 above, alone.

Godin et al. '138 disclose a device substantially as claimed, as advanced above, with the exception of requiring: (a) the set of system defined conditions comprises: a first condition in which an offered quantity of a product will expire in a first time period that is less than 51 percent of a sale duration period; a second condition in which the offered quantity of the product will expire during a second time period that is between 51 and 60 percent of the sale duration period; a third condition in which the offered quantity of the product will expire during a third time period that is between 61 and 80 percent of the sale duration period; a fourth condition in which the offered quantity of the product will expire during a fourth time period that is between 81 and 99 percent of the sale duration period; a fifth condition in which the offered quantity is available; a sixth condition in which the offered quantity has expired or the sale duration period has expired (claim 7, lines 1-12); (b) the sales trend status indicator is one of a plurality of graphic images, each graphic image representing one of a plurality of sales trend conditions (claim 15, lines 1-2; claim 29, lines 1-2); (c) the set of system defined conditions comprises: a first condition in which an offered quantity of a product will expire with that is less than 51 percent of a sale duration period remaining; a second condition in which the offered quantity of the product will expire with between 40 to 59 percent of the sale duration period remaining; a third condition in which the offered quantity of the product will expire with between 20 and 39 percent of the sale duration period remaining; and a fourth condition in which the offered quantity of the product will expire with between 1 and 19 percent of the sale duration period (claim 17, lines 1-9); and (d) the set of system defined conditions comprises: a first condition in which an

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offered quantity of a product will expire in a first time period that is less than 51 percent of a sale duration period; a second condition in which the offered quantity of the product will expire during a second time period that is between 51 and 60 percent of the sale duration period; a third condition in which the offered quantity of the product will expire during a third time period that is between 61 and 80 percent of the sale duration period; a fourth condition in which the offered quantity of the product will expire during a fourth time period that is between 81 and 99 percent of the sale duration period (claim 30, lines 1-10).

Regarding (a) - (d), it would have been obvious to one of ordinary skill in the art at the time the invention was made that there would be a set system of defined conditions depending upon how quickly the item was selling versus how much time was left in the auction. Godin et al. '138 disclose that the auction updates itself and shows how many units are left against how much time is left in the auction (column 6, lines 37-43) if the item has sold out then the user will not be able to purchase the item (column 6, lines 50-56). Additionally, it would have been obvious to one of ordinary skill of the art that a plurality of graphic images could be shown, each graphic representing the sales trend condition, for such a basic reason as to provide a "quick-look" way of determining how quickly an item is selling, and to provide further ascetic appeal to the web page (see MPEP 2144.04 I).



***Requirement for Information Under 37 CFR §1.105***

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

Applicant provides a screen shot of the invention in use on a webpage titled "eCost.com", in Figure 2. However, no date is given as to when this webpage was first created.

In response to this requirement, please provide the citation and a copy of the webpage known by the assignee, or which any of the applicants authored or co-authored, describing the technology disclosed by Figure 2, "eCost.com".

For the publication, please provide a concise explanation of the reliance placed on that publication in distinguishing the claimed subject matter from the prior art.

The fee and certification requirements of 37 CFR §1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR §1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement

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under 37 CFR §1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated, the subject matter found in applicant's disclosure.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete response to the requirement for that item.

### ***Response to Arguments***

Applicant's arguments filed April 2, 2002 have been fully considered but they are not persuasive.

Regarding applicant's arguments against the 35 U.S.C. 112 second paragraph rejections against claims 10-12, 21, and 22, the examiner is of another opinion. Specifically, although the claims are interpreted in light of the specification, limitations

from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments that, "Figure 10 refers to a single product, not a plurality of products as specified in the claims" (emphasis added by applicant; paragraph 4, page 9 of "Remarks"), are acknowledged. However, Godin et al. '138 states, "FIGS. 9 to 12 are prints of various screens that the computer system provides to the user during browsing at the site and during the auction process" (column 3, lines 8-10). Therefore, applicant's arguments against Figure 10 of Godin et al. '138 are not considered persuasive since Figures 5-12 are illustrative examples, not limiting showings of the device of Godin et al. '138.

With respect to applicant's response to the information request under 37 CFR 1.105, the examiner finds the information lacking in response. Specifically, the examiner requested that the date of publication of Figure 2 be provided. Since the information was not given, the request for information under 37 CFR 1.105 stands.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

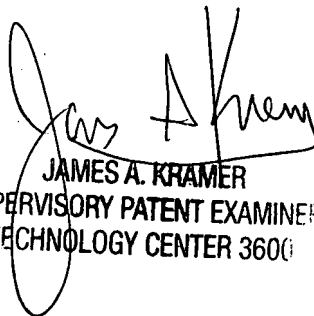
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lindsay M. Maguire  
5/31/07

  
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6/1/07